Supreme Court, U. S.
FILED
NOV 20 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

October Term, 1974

No. 74-1563

THE CITY OF EASTLAKE, *et al.*,
Petitioners,

vs.

FOREST CITY ENTERPRISES, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Petition for Certiorari Filed June 12, 1975
Certiorari Granted October 14, 1975

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No. 72 Civ 0219

In the Court of Common Pleas

LAKE COUNTY, OHIO

FOREST CITY ENTERPRISES, INC.,
Plaintiff,

vs.

THE CITY OF EASTLAKE, *et al.*,
Defendants.

RELEVANT DOCKET ENTRIES

4/14/72	Complaint, Exhibit, and Notice of Hearing filed.
4/14/72	Summons issued by Certified Mail RRR#550203 to the City of Eastlake, RRR#550204 to The City Planning Commission of the City of Eastlake, and RRR#550205 to the Board of Elections of Lake County.
5/4/72	Answer of Defendant, The City of Eastlake and The City Planning Commission of the City of Eastlake, Affidavit of Service filed.
5/16/72	Journal Entry filed: Defendant, Board of Elections of Lake County leave to move or plead by June 15, 1972.
6/9/72	Journal Entry filed: Leave to plead by July 14, 1972.
8/31/72	Plaintiffs trial memorandum. Exhibits filed.
8/31/72	Certificate for court stenographers fee filed.
9/27/72	Journal Entry filed: Defendant, City of Eastlake leave to file answer brief by October 15, 1972.

10/16/72 Defendants, Answer trial memorandum, Affidavit of Service filed.

10/27/72 Journal Entry filed: Opinion.

11/9/72 Journal Entry filed: Plaintiff complaint dismissed at plaintiff's costs.

12/8/72 Notice of Appeal filed.

12/8/72 Notices issued to Andrews & Illenberger, Fred V. Skok, and Deidre Becker, Court of Appeals, and Clerk of Court of Appeals.

12/19/72 Notice of Cross Appeal, filed.

12/19/72 Notices issued to Timothy F. McMahon and Michael M. Hughes, Fred V. Skok, Deidre Becker and Clerk of Court of Appeals.

1/3/73 Plaintiffs Transcript of Record filed.

1/17/73 Transcript of Journal Entries and Docket issued to Court of Appeals.

5/9/75 Mandates received from Ohio Supreme Court (Reversed & Remanded) Court of Appeals (Affirmed) and original papers received from Court of Appeals, filed.

In the Court of Appeals for the Eleventh Appellate District of Ohio

12/8/72 Notice of Appeal, filed.

1/11/73 Papers transferred from Case #4-264

1/17/73 Record, filed.

2/6/73 Motion of Plaintiff-Appellant for Enlargement of time for filing Brief and Assignment of Error, filed.

2/27/73 Journal Entry filed: Upon Motion, leave granted appellant to file Brief and Assignment of Errors by March 8, 1973. See Journal Entry.

3/8/73 Assignment of Error and Brief of Appellant, filed.

3/30/73 Motion to Enlarge Period to file Answer Brief, filed.

4/6/73 Journal Entry filed: Upon Motion, leave granted appellee to file Answer Brief by April 28, 1973. See Journal Entry.

4/27/73 Assignment of Error on Cross Appeal and Brief of Appellees, filed.

7/23/73 Judgment affirmed. See Announcement of Decision. See Journal Entry to be prepared.

7/23/73 Announcement of Decision, filed.

8/28/73 Judgment affirmed on Cross-Appeal. See Opinion. See Journal Entry to be prepared.

8/28/73 Opinion filed.

9/11/73 Journal Entry filed. Judgment of Trial Court is affirmed as to appeal by appellant and the Cross Appeal of appellee. Appellants costs. Exceptions.

10/10/73 Notice of Appeal to Ohio Supreme Court, Certificate of Service, filed.

1/28/74 Copy of entry granting Motion for Lake County to certify its record received from Ohio Supreme Court, filed.

1/28/74 Transcript of Docket and Journal Entries issued to Ohio Supreme Court.

1/31/74 Certified Receipt #759399 returned and filed.

4/18/75	Entry received from Ohio Supreme Court reversing Court of Appeals decision, filed.
4/18/75	Mandate from Ohio Supreme Court filed: Judgment of the Court of Appeals affirming the validity of the mandatory referendum and 55 percent approval provisions of the Eastlake Charter, is reversed, for the reasons set forth in the Opinion rendered herein. Appellees costs.
4/18/75	Rehearing Order received from Ohio Supreme Court: It is ordered by the Court that rehearing in this case is denied.
5/8/75	Original file received from Ohio Supreme Court.
5/9/75	Mandate and original papers issued to Common Pleas Court.
7/14/75	Entry received from Ohio Supreme Court ordering stay of execution of Judgment for a period of 20 days for counsel for appellee to apply to the Supreme Court of the United States for an indefinite stay. If an indefinite stay is not issued within this 20 day period, this stay will automatically terminate and no further order will issue from Ohio Supreme Court, filed.

In the Supreme Court of Ohio

November 9, 1973	Notice of Appeal and Certificate of Service filed.
November 9, 1973	Memorandum of Appellant and Certificate of Service filed.
December 10, 1973	Memorandum of Appellee and Certificate of Service filed.

January 25, 1974	Motion to Certify Record Allowed. J. 52-363
January 25, 1974	Order to Certify Record sent Clerk of Courts.
January 25, 1974	Cause docketed on its merits.
January 29, 1974	Original Papers filed.
February 26, 1974	Printed Record and Acknowledgment of Proof of Service filed.
March 11, 1974	Brief of Appellant and Acknowledgment of Proof of Service filed.
April 10, 1974	Brief of Appellee and Acknowledgment of Proof of Service filed.
May 10, 1974	Motion by Lawyers for Housing for leave to file brief of amicus curiae and Acknowledgment of Proof of Service filed.
May 16, 1974	Leave to Lawyers for Housing to file brief amicus curiae. C. William O'Neill. J. 52-437
May 31, 1974	Brief of Amicus Curiae and Acknowledgment of Proof of Service filed.
November 13, 1974	Hearing on the merits.
March 19, 1975	Judgment reversed. J. 53-149
March 28, 1975	Motion for Rehearing and Certificate of Service filed by Appellee.
April 3, 1975	Memorandum opposing rehearing and Certificate of Service filed.
April 17, 1975	Rehearing Denied. J. 53-;97
April 17, 1975	Mandate Issued.
April 17, 1975	Certified copy of entry sent Clerk.

May 6, 1975	Original papers sent to Clerk.
May 8, 1975	Notice of Appeal to United States Supreme Court filed.
May 21, 1975	Certified Transcript mailed to United States Supreme Court.
July 9, 1975	Motion to Stay pending appeal and Certificate of Service filed.
July 9, 1975	Memorandum opposing Stay and Certificate of Service filed.
July 10, 1975	Execution of Judgment stayed for 20 days pending appeal. C. William O'Neill. J. 53
October 20, 1975	Entry from United States Supreme Court filed—Certiorari Allowed.

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title omitted in printing)

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION AND EQUITABLE RELIEF

(Filed April 14, 1972)

Complaining of defendants, plaintiff says that:

1. Plaintiff is a corporation organized under the laws of the State of Ohio and is the owner of certain property, hereinafter described, within the limits of the City of Eastlake, Lake County, Ohio. The defendants are the City of Eastlake, a municipal corporation in Lake County, Ohio; the City Planning Commission of the City of Eastlake; and the Board of Elections of Lake County, Ohio.

2. The real property material hereto was, at all times material hereto, owned by the plaintiff and is described as follows:

"Situated in the City of Eastlake, County of Lake, and State of Ohio, and known as being part of Original Willoughby Township, Lot No. 5 in Tract No. 14 and Lot No. 4 in Card Tract and further bounded and described as follows: Beginning at a point in the centerline of Vine Street, (60 feet wide) being distant South 89° 42′ 14″ East measured along said centerline 34.09 feet from its point of intersection with the Westerly line of land conveyed to Ernestine Greenberger by deed dated May 22, 1951, recorded in Volume 299, Page 375 of Lake County Deed Records, Thence South 0° 00′ 57″ East and parallel to said Westerly line of Greenberger 931.99 feet to the principal place of beginning of the premises herein intended to be described:

COURSE I Thence continuing South 0° 00′ and 57″ East and parallel to said Westerly line of Greenberger and the Southerly prolongation thereof, 709.15 feet to a point;

COURSE II Thence South 89° 59′ 03″ West, 485.43 feet to a point in the Easterly line of Shorelands No. 3 Allotment as recorded in Volume D of Maps, Page 31 of Lake County Records;

COURSE III Thence North 0° 03′ 38″ East, along said line of Shorelands No. 3 Allotment, 663.08 feet to a point at the Northeasterly corner thereof;

COURSE IV Thence South 89° 46′ 17″ West, along the Northerly line of said Shorelands No. 3 Allotment 179.50 feet to a point in the centerline of East 337 Street (60) feet wide;

COURSE V Thence North 0° 41′ 05″ West along said centerline of East 337 Street, 43.49 feet to a point;

COURSE VI Thence North 89° 42′ 14″ East and parallel to said centerline of Vine Street, 664.57 feet to the place of beginning and containing 8.0618 Acres of land, be the same more or less, but subject to all legal highways.

(EASEMENT) Situated in the City of Eastlake, County of Lake and State of Ohio, and known as being a part of Lot 4, Card Tract, in said City and is further bounded and described as follows: Beginning in the centerline of Vine Street at the Northwest corner of land conveyed to Ernestine Greenberger by deed recorded in Volume 299, Page 375 of Lake County Records of Deeds, said point being the place of beginning of the premises herein intended to be described:

COURSE I Thence North 89° 42′ 14″ West, along said centerline of Vine Street, a distance of 34.09 feet to the Northwest corner of lands conveyed to Howard & Morris Abrams by deed recorded in Volume 542, Page 281 of Lake County Records of Deeds;

COURSE II Thence South 0° 00′ 57″ West, along the Westerly line of lands of said Abrams 931.99 to the North line of Lot 5, Tract 14 also known as the Gore line;

COURSE III Thence North 89° 46′ 17″ East 34.09 feet along the North line of said Lot 5, to the Westerly line of land conveyed to said Ernestine Greenberger;

COURSE IV Thence North 0° 00′ 57″ East, along the West line of said Greenberger a distance of 976.30 feet to the place of beginning, be the same more or less, but subject to all legal highways."

3. Prior to May 18, 1971, the above-described real property was zoned for limited industrial use (M-2 District) under the zoning ordinances of the City of Eastlake. On or about May 18, 1971, plaintiff filed its application, in accord with the zoning ordinances of the City of Eastlake for a change in such zoning to multi-family high rise use (R-MF-HR District). Thereafter such application was processed by the defendant City Planning Commission and City Council of the City of Eastlake and, on December 28, 1971, the said Council enacted ordinance 1971-168 which provided that section 1143-03 of the Codified Ordinances of the City of Eastlake was amended to change the zoning use classification of the said property in accord with plaintiff's application from limited industrial use to multi-family high rise use.

4. Plaintiff was, at all times material hereto, and now is desirous of, willing and able to construct one or more high rise buildings on the subject property. To such end, on April 6, 1972, plaintiff applied to the defendant City Planning Commission for "parking and yard approval" of its proposed high rise building project and paid the necessary fee required for the submission of such application. At its regular meeting held on said date, defendant City Planning Commission denied the said application for the reason that the property in question was not zoned for plaintiff's proposed use on the ground that ordinance 1971-168 described above had never become effective by virtue of Article VIII, Section 3 of the Charter of the City of Eastlake.

5. In denying plaintiff's application, defendant City Planning Commission relied exclusively on the provisions of Article VIII, Section 3 of the Charter of the City of Eastlake set forth in full text in Exhibit "A" attached to this Complaint. Said provisions were adopted as an amendment to the Charter of the City of Eastlake at a regular municipal election held on November 2, 1971, pursuant to an initiative petition. The initiative petition was circulated and filed, and said election was held during the pendency of plaintiff's application for rezoning of the subject property before the defendant City Planning Commission and City Council of the City of Eastlake.

6. In substance, the charter provisions in question provide that no ordinances dealing with zoning, land use or development shall become effective until approved at a mandatory referendum election by a 55% affirmative vote of the electorate, the cost of which election must be borne by the owner of the land affected.

7. Plaintiff has complied with all the requirements of the applicable ordinances of the City of Eastlake, and all applicable administrative procedures. But for the charter amendment described in the preceding paragraph, plaintiff would be permitted to proceed with proposed use of the subject real property.

8. The provisions of Article VIII, Section 3 of the City Charter set forth in Exhibit "A" hereto, may not lawfully be applied to plaintiff's property by reason of the pendency of plaintiff's application at the time of the adoption of said Charter amendment.

9. The provisions of Article VIII, Section 3 of the City Charter set forth in Exhibit "A" hereto are violative of the constitutions of the United States and the State of Ohio in the following particulars among others:

a. In that said provisions deprive plaintiff of its property without due process of law; and

b. In that said "mandatory referral" of any change in the zoning map is an abdication of legislative and administrative responsibility and violation of separation of powers and deprives plaintiff of procedural due process;

c. In that said provision deprives plaintiff of the equal protection of the laws; and

d. In that said provision contravenes the provisions of the Constitution of Ohio dealing with referendum and initiative.

10. Plaintiff has invested large sums of money, and expended considerable time and effort in the preparation of plans and other steps preliminary to construction of its high rise project on the subject property. Unless the defendant City Planning Commission is ordered to process and approve plaintiff's application for parking and yard approval in the light of zoning as establishing by ordinance 1971-168 and without regard to a mandatory referendum under Article VIII, Section 3 of the Charter of the City of Eastlake, as amended, plaintiff will sustain grave and irreparable injury for which it has no adequate remedy at law.

11. The provisions of Article VIII, Section 3 of the Charter set forth in Exhibit "A" hereto, which require that an owner of real property affected by an ordinance involving land use or development agree to assume all costs of the mandatory referendum election provided for in said sections, and to post a bond with the City Auditor to secure said costs. Plaintiff has refused to do so and, notwithstanding such refusal, the defendant City of Eastlake has caused ordinance 1971-168 to be certified to the defendant Board of Elections to be referred to the elec-

torate at the election of May 2, 1972. Unless restrained and enjoined, the defendant Board of Elections will cause said question to be voted upon at the election of May 2, 1972, will count the votes for and against said proposition, and will certify the result thereof.

12. Plaintiff would sustain grave and irreparable injury for which it has no adequate remedy at law if such election were held, the votes counted, and the result certified.

WHEREFORE, plaintiff prays judgment against the defendants as follows:

1. A judgment declaring that the amendment to Article VIII, Section 3 of the Charter of the City of Eastlake adopted at the general election of November 2, 1971 is unconstitutional, void and of no effect;

2. A permanent mandatory injunction directing the defendant City Planning Commission to consider and approve plaintiff's application for parking and yard approval with respect to the subject property under ordinance 1971-168 and the balance of the zoning ordinances of the City of Eastlake without regard to the provisions of Article VIII, Section 3 of the Charter of the City of Eastlake adopted on November 2, 1971.

3. A preliminary injunction which, upon final hearing would become permanent, restraining and enjoining the defendant Board of Elections from:

a. Submitting or causing to be submitted the question of the effectiveness of Eastlake Ordinance 1971-168 at the election to be held on May 2, 1972;

b. Counting or causing to be counted any votes cast for or against said proposition; and

c. Certifying the result of such votes to the Auditor or Council of the City of Eastlake.

4. Such other relief as may be appropriate in the premises.

/s/ Timothy F. McMahon
/s/ Michael M. Hughes
Thompson, Hine & Flory
Attorneys for Plaintiff

Note:

Exhibit "A" to Plaintiff's Complaint omitted in printing which Exhibit is a copy of the Eastlake Charter Amendment printed on page 69 of this Appendix.

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title omitted in printing)

ANSWER OF DEFENDANTS, THE CITY OF EASTLAKE AND THE CITY PLANNING COMMISSION OF THE CITY OF EASTLAKE

(Filed May 4, 1972)

Defendants, The City of Eastlake and the City Planning Commission of the City of Eastlake, for answer to the Complaint of plaintiff, state as follows:

1. Admit the allegations of Paragraph Nos. 1, 2, 3, 4, 5, and 6, of plaintiff's Complaint.

2. Deny the allegations of Paragraph Nos. 7, 8, 9, a, b, c, d, 10, 11, and 12, of plaintiff's Complaint.

3. These answering defendants further state that the Amendment to Article VIII, Section 3 of the Charter of the City of Eastlake, which was duly adopted at the General Election of November 2, 1971, is constitutional, valid and in full force and effect, from and after its date of enactment.

WHEREFORE, these answering defendants pray as follows:

1. That the Court declare the Amendment to Article VIII, Section 3 of the Charter of the City of Eastlake is constitutional, valid, and in full force and effect as it applies to plaintiff's property.

2. That in the event the Court determines that any section or part of the Amendment to Article VIII, Section 3, the Charter of the City of Eastlake, is invalid, that such determination shall not impair the validity, force, or effect, of any other section or part thereof as provided by Article XI, Section 4, of the Charter of the City of Eastlake.

3. That the Court deny plaintiff's petition requesting preliminary and permanent injunctions as therein prayed for.

4. That plaintiff's Complaint be ordered dismissed at plaintiff's cost.

/s/ J. Melvin Andrews
Attorney for Defendants, The City of Eastlake and The City Planning Commission of the City of Eastlake

(Certificate of Service omitted in printing)

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title omitted in printing)

TRANSCRIPT OF PROCEEDINGS

(August 31, 1972)

APPEARANCES:

On behalf of the Plaintiff:
Thompson, Hine & Flory
By: Mr. Michael M. Hughes

On behalf of Defendants City of Eastlake and Eastlake Planning Commission:
Andrews & Illenberger
By: J. Melvin Andrews

[2] BE IT REMEMBERED that heretofore, to-wit, at the April A.D. 1972 Term of said Court, on Thursday the 31st day of August, 1972, this cause came on to be heard in Courtroom No. 1, before the Honorable John F. Clair, Jr., Judge of said Court.

Thereupon, the following proceedings were had:

Mr. Hughes: Good afternoon, your Honor.
The Court: Are you ready to proceed?
Mr. Hughes: Yes, your Honor. My name is Michael Hughes, I represent Forest City Enterprises in this case. I believe that Mr. Andrews and I have agreed as to the facts and legal issues involved in this case.

May I say first, your Honor, that insofar as the complaint seeks any relief against the Lake County Board of Elections, we would specifically dismiss them as a Defendant in this case.

As background on that aspect of the case, this lawsuit was filed a short time before the May primary election, and it sought as its third branch of its prayer for relief preliminary and permanent injunction against the Board of Elections from submitting the Ordinance which is the subject of this case to the referendum election on the primary date in May; but we were unable to [3] get a hearing on our motion for preliminary injunction until after the election had been held, and in June of this year we specifically dismissed the motion for preliminary injunction.

I think that the issues remain however in the case, other than those directed to the Board of Elections or to the holding and certifying the result of the election; and there I would ask leave, or I would dismiss the Board of Elections from the case.

With regard to the balance of the matter, it is my intention on behalf of the Plaintiff to submit the case on the first six (6) paragraphs of the complaint which have been admitted by the Defendant.

We also, I think, have agreed this afternoon to submit a copy of the charter, the charter amendment, and the relevant ordinances to the Court by agreement.

Other than that the Plaintiff will offer no evidence in the case, and I would just ask leave to incorporate my complaint in the opening statement. We will be, in essence, submitting this on the pleadings and on additional copies of the relevant charter and ordinances.

[4] I have a trial memorandum to submit to the Court. I think this is essentially a question of law, your Honor, and I'm sure Mr. Andrews will want to respond to it, of course.

Mr. Andrews: Well, I am essentially in agreement with the comments that have just been made. I think we're dealing here only with a legal issue, and I think the

legal issue can be fairly and squarely presented to the Court through the pleadings and through such other ordinances and the charter of the City of Eastlake as we may introduce to the Court.

I would ask that the Court take the matter under advisement, or the case under advisement, and set time limits within which to file first the plaintiff's brief, and the defendant's brief on behalf of the defendant. In view of the serious nature of the question involved here, and the fact that it involved a lot of people, I would want a minimum of thirty (30) days in which to prepare my brief in the case. I think it would merit considerable legal research in order to be able to present to the Court all possible cases which may be material to the issues in this case.

[5] Mr. Hughes: We will file ours at this time, your Honor, so that we won't need any additional time; but I would like leave of perhaps ten (10) days after the defendant files his for a reply brief.

The Court: I take it the results of the election are not pleasing to you?

Mr. Hughes: Yes, I should have said that, your Honor; whether they were pleasing or not, they were not satisfactory.

The Court: I've marked it heard and submitted. Thirty (30) days for the defendant's brief and ten (10) days for the reply brief. You're filing your brief today?

Mr. Hughes: Yes, your Honor. And at this time I would offer, so the Court has copies, copies of the two ordinances referred to in the complaint and the charter amendment which, by the way, is attached to the complaint as Exhibit A and has been admitted.

Can we mark these as joint exhibits, Mr. Andrews?

Mr. Andrews: Oh, mark them Plaintiff's exhibits, it's all right.

[6] (Plaintiff's Exhibits Nos. 1, being a charter amendment; 2, being Ordinance 1971-168; and 3, being Ordinance 1972-2, were marked for identification.)

The Court: They will be admitted.

Thereupon, Plaintiff's Exhibits Nos. 1, 2 and 3 were offered and received in evidence, and are enclosed herewith and made a part of this record.

Mr. Hughes: I have also, your Honor, a copy of the charter, but my copy is marked up and I would ask leave to submit another copy to the Court in a day or two, when I can obtain one.

The Court: Certainly. I have to take judicial notice of that anyway.

Mr. Hughes: I know, your Honor; but I thought it would be convenient for the Court to have a copy in the file.

The Court: Thank you. Is there anything further to be discussed at this time?

Mr. Hughes: Nothing for the Plaintiff, your Honor. We're waiving oral argument and submitting it on the brief.

Mr. Andrews: That is correct.

Mr. Hughes: That's fine, your Honor.

The Court: Thank you.

[7] The above and foregoing, together with the exhibits offered and received in evidence, was all of the proceedings taken upon the trial of this cause in said Court of Common Pleas, in and for Lake County, Ohio.

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title omitted in printing)

OPINION

(Filed October 27, 1972)

Plaintiff is the owner of real property located in the City of Eastlake and sought to have the property rezoned from limited industrial to multi-family high rise.

An application for such rezoning was filed on May 18, 1971 and on December 28, 1971 Council of the City of Eastlake enacted an Ordinance providing the necessary zoning change.

However, on November 2, 1971 the voters of the City of Eastlake adopted Art. VIII, Section 3 of their Charter which provided that any Ordinance changing any zoning or land use in the City must be submitted to the voter and receive a 55% affirmative vote.

The Ordinance in question did not receive the necessary votes and brings this action challenging the constitutionality of the Charter Amendment.

The first challenge is that the provision of the Charter may not be applied to property such as the plaintiff's as their application was pending when the Amendment to the Charter was adopted.

Plaintiff cites a number of cases where zoning was changed after application was made for a permit, such is not the case here. The zoning has not been changed and the effect of the Charter Amendment is to change the methods to obtain a change.

The next challenge is that the Amendment offends both the Federal and State Constitution as follows:

1. It constitutes an improper abdication of the legislative duties of Council, citing, *James v. Valtierra*, 402 U.S. 137. This Court is of the opinion that this case tends to establish the right of the City to adopt such a Charter Amendment. There is no question that the adoption of zoning requirement is a legislative act. But that is not what this Amendment does. What it does do, is preserve to the electors of Eastlake, the right to review the legislation adopted by their Planning Commission and their Council.

The next challenge is that the Amendment is violate [sic] of the due process clause.

A) The need to refer for a referendum without standard or citeria. The Court has already pointed out that the Council retains the standards and make the change, the people merely adopt or reject the Ordinance as submitted, they do not create the legislation.

The next challenge is the 55% requirement of the Amendment but cites no authority for this claim.

The next claim is the assessment of the costs of the election to the property owner. The Court is of the opinion that such provision is unconstitutional.

It is true that the Amendment refers to the applicant but suppose the change proposed to be made is originated by the Planning Commission who then is the applicant, or if the change proposed effects others than the applicant. This would not, however invalidate the balance of Amendment.

The defendant further argues that by reason of the Amendment it would be subject to arbitrary and unreasonable action. No such evidence was presented to this Court, if such facts do in fact exist, the Court would still be available to grant relief in such cases.

Lastly, the plaintiff charges that the Amendment offends the referendum provisions of the Ohio Constitution. No citation or other authority is offered in support of this contention.

A somewhat similar mandatory referendum requirement was approved by the U. S. Supreme Court in *Shaffer v. Veltierra*, 402 U. S. 137, see also, *Hunter v. Erickson*, 393 U. S. 385.

The Court makes no comment on the wisdom of what appears to be a cumbersome method of changing zoning to meet changing times.

The Court is of the opinion that the presumption of the validity of Amendment must prevail and declares the amendment to be constitutional except as to the assessment of costs of the election.

Prevailing counsel will prepare a judgment entry in accordance with this opinion and the Rules of this Court.

John F. Clair, Jr.

Judge of the Court of Common Pleas

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title omitted in printing)

JUDGMENT ENTRY

(Filed November 9, 1972)

This cause came on for hearing on the pleadings, the evidence, stipulations, and briefs of counsel, after having been regularly assigned for trial, and on consideration thereof, the Court finds and declares Article VIII, Section 3 of the Eastlake Charter, as enacted at the General Election on November 2, 1971, to be valid and constitutional, except for the provision thereof requiring the applicant for such rezoning to assume and pay the costs of the election, which provision the Court finds and declares to be unconstitutional.

The Court further finds and declares that Article VIII, Section 3 of the Eastlake Charter is fully applicable to plaintiff's property as described in plaintiff's Complaint.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that plaintiff's Complaint for preliminary and mandatory injunctive relief be ordered dismissed at plaintiff's costs. Exceptions noted for the plaintiff.

/s/ John F. Clair, Jr.
Judge of the Court of Common Pleas

COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT

(Title omitted in printing)

OPINION OF THE COURT OF APPEALS AS TO THE APPEAL

(Filed July 23, 1973)

This cause came on to be heard upon the record in the Trial Court, and was briefed and argued by counsel for the parties. Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each assignment of error was reviewed and upon review the following disposition was made:

This is an appeal from a judgment of the Common Pleas Court.

The facts are not in dispute. Plaintiff-appellant owns certain property in the City of Eastlake. Prior to May 18, 1971 it was zoned for limited industrial use. On May 18, 1971 appellant filed an application for a change in the zoning to multi-family high rise use. The application was processed by the City Planning Commission and City Council and finally the change in zoning classification was approved by Council in Ordinance 1971-168.

Article VIII, Section 3 of the Charter of the City of Eastlake provides that no ordinance dealing with zoning, land use or development shall take effect until after a mandatory referendum election is held at which the ordinance receives a 55% affirmative vote, the cost of the election being borne by the owner of the real property affected.

The sole question before this court is whether Article VIII Section 3 of the Charter of the City of Eastlake is constitutional.

The answer is yes.

Article II Section 1f of the Ohio Constitution states:

> "The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; *such powers shall be exercised in the manner now or hereafter provided by law.*" (Italics ours)

RC 731-29 reads as follows in pertinent part:

> "Any ordinance or other measure passed by the legislative authority of a municipal corporation shall be subject to the referendum except as provided by section 731.30 of the Revised Code. No ordinance or other measure shall go into effect until thirty days after it is filed with the mayor of a city or passed by the legislative authority in a village, except as provided by such section.
>
> "When a petition, signed by ten per cent of the number of electors who voted for governor at the next preceding general election for the office of governor in the municipal corporation, is filed with the city auditor or village clerk within thirty days after any ordinance or other measure is filed with the mayor or passed by the legislative authority of a village, ordering that such ordinance or measure be submitted to the electors of such municipal corporation for their approval or rejection, such auditor or clerk shall, after ten days, and not later than four p.m. of the nine-

> tieth day before the day of the election, certify the petition to the board of elections. . . ."

Article VIII Section 3 of the Eastlake Charter states in pertinent part as to zoning amendments:

> ". . . That in the event the city council should approve any of the preceeding changes, or enactments, whether approved or disapproved by the Planning Commission it shall not be approved or passed by the declaration of an emergency, and it shall not be effective, but it shall be mandatory that the same be approved by a 55% favorable vote of all votes cast of the qualified electors of the City of Eastlake at the next regular municipal election. . . ."

A cursory reading of RC 731.29 and Article VIII Section 3 of the Charter of Eastlake clearly reveals that RC 731.29 requires a petition signed by ten per cent of the number of electors who voted for governor at the next preceeding election for the office of governor in the municipal corporation as a prerequisite to submitting a referendum on a municipal ordinance to the voters of the municipality whereas Article VIII Section 3 of the Eastlake Charter requires no petitions signed by electors of the City of Eastlake as a prerequisite to a referendum on a zoning change ordinance, in fact requires a mandatory referendum on every zoning change ordinance approved by council.

RC 731.41 states:

> "Sections 731.28-731.41, inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures."

The Supreme Court of Ohio held in *State ex rel. Bramblette v. Yordy*, 24 OS 2d 147 on page 150:

> "In providing for referendum, however, a municipal charter is not restricted to the addition of the same provisions enacted by the General Assembly. It may be less restrictive as to use of the referendum, as was the Charter of the City of Toledo which authorized referendum, on all ordinances, including one levying a tax passed as an emergency measure, State ex rel. Snyder vs. Bd. of Elections (1946), 78 O App 194. It may be more restrictive, as in Dillon v. Cleveland, supra 117 Ohio St. 258, where a referendum would have been required under said law, but was not required under the provisions of the Charter of the City of Cleveland."

Therefore, we are of the opinion that that portion of Article 2 Section 1f of the Ohio Constitution which says that "such powers shall be exercised in the manner now or hereafter provided by law" refers to the provisions of a municipality's charter if said charter has provisions for initiative and referendum relative to its own ordinances or, where there are no charter provisions, the exercise of such power is only provided for by the General Assembly.

In the instant case, the charter of the City of Eastlake provides for a referendum on all ordinances containing zoning changes, a provision which is "less restrictive as to the use of the referendum", but which is a permitted provision of the Charter "law" under the "home rule" provisions of the Constitution.

In our opinion, Article VIII Section 3 of the Eastlake Charter is not in conflict with Article 2 Section 1f of the Ohio Constitution. In fact, Article VIII Section 3 of

the Eastlake Charter is permitted under Article XVIII Section 3 in the Ohio Constitution.

Judgment affirmed.

Robert E. Cook
Judge

Jones, *P.J.*
Hofstetter, *J.*, concur.

OPINION OF THE COURT OF APPEALS AS TO THE CROSS APPEAL

(Filed August 28, 1973)

Cook, *J.*

Coming now to the cross appeal of the appellees, City of Eastlake, et al., which states that "the portion of the judgment of the Court of Common Pleas, which found unconstitutional the provision of the Eastlake Charter Amendment requiring assessment of the costs of election to the effected [sic] property owner is contrary to law".

In our opinion, the trial court should be affirmed as to its conclusion that the portion of the Eastlake charter that assesses the cost of referendum on a proposed zoning change to the applicant is unconstitutional.

In State, ex rel., Ayres, 142 OS 216, the Supreme Court of Ohio held:

> "Under the mandatory provisions of Section 2, Article X and Section 1, Article XVII of the Constitution of Ohio, and the statutes passed pursuant thereto, all matters pertaining to the conduct of election are state functions."

Pursuant to said constitutional provision the legislature of the State of Ohio enacted RC 3501.17 in which it provided that the costs of special elections held either on the regular primary or general election days or on a day other than the day of a primary or general election should be charged to the political subdivision involved.

Therefore, any provision in a charter of a municipality attempting to assess the cost of an election for a referendum on a proposed zoning change to the applicant is in violation of the Ohio Constitution and RC 3501.17.

Judgement on cross appeal is affirmed.

Judge Robert E. Cook

Jones, *P.J.*

Hofstetter, *J.*, concur.

COURT OF APPEALS OF OHIO

ELEVENTH APPELLATE DISTRICT

(Title Omitted in printing)

JOURNAL ENTRY OF THE COURT OF APPEALS

(Filed September 11, 1973)

This cause came on to be heard upon the record in the Trial Court, and was briefed and argued by counsel for the parties.

Upon consideration whereof, this Court finds no error prejudicial as to appeal by appellant and the Cross-Appeal of appellee, and, therefore, the judgment of the Trial Court is affirmed. Each assignment of error was reviewed by the Court and disposed of as set forth in this Court's Announcement of Decision and Opinion, of earlier date, which is incorporated herein by reference.

It is ordered that appellee recover of appellant the costs herein taxed.

This Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Trial Court to carry this judgment into execution. A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Robert E. Cook
George M. Jones
Edwin T. Hofstetter
Judges

IN THE SUPREME COURT OF OHIO

(Title omitted in printing)

Note:

The Opinion and Judgment of the Ohio Supreme Court are printed in the Petition for Certiorari at pages A13 and A38 respectively.

IN THE SUPREME COURT OF OHIO

(Title omitted in printing)

ORDER OVERRULING MOTION FOR REHEARING

(Entered April 17, 1975)

It is ordered by the court that rehearing in this case is denied.

THE CHARTER OF THE CITY OF EASTLAKE

(Effective January 1, 1954)

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CHARTER

of the

CITY OF EASTLAKE

EDITOR'S NOTE: This Charter became effective January 1, 1954; See Article X, Section 6.

ARTICLE I

Preamble

We, the people of the City of Eastlake, in the County of Lake, and State of Ohio, within the boundaries, as now established in the manner provided by the laws of the State of Ohio, and as incorporated in this Charter, do hereby adopt this Charter for the government of the City of Eastlake in order to secure the benefits of municipal home rule and to exercise all the powers of local self-

government under the Constitution and the laws of the State of Ohio.

Section 1. Names and Boundaries.

The Municipality now existing in the County of Lake, State of Ohio, and known as the City of Eastlake, shall continue to be a body politic and corporate under the name of the City of Eastlake, with the same boundaries as now exist, but with power and authority to change its boundaries in the manner authorized by the laws of the State of Ohio, except that no territory shall be detached from or annexed to or merged with, any body politic, nor shall the corporate existence of the City of Eastlake be terminated, without the assent of a majority of the electors of the City voting on such proposal. Any such question shall be submitted to the electors at a regular municipal or general election in such manner as the Council shall by resolution or ordinance prescribe.

Section 2. Powers.

The Municipality shall have all the powers of local self-government now or hereafter granted to municipalities by the Constitution of the State of Ohio, and such further powers as are now or hereafter granted by the laws of the State of Ohio; and all such powers shall be exercised in the manner prescribed by this Charter, or, to the extent that the manner is not prescribed herein, in such manner as the Council may prescribe by ordinance. The powers of the Municipality may also be exercised, except as a contrary intent appears in this Charter or in the enactments of the Council conformably hereto, in such manner as may now or hereafter be provided by the general laws of Ohio. Enumeration of, or reference to particular powers by this Charter shall not be construed to be exclusive.

ARTICLE II

Nominations and Elections

Section 1. Procedures

Nominations for elective offices of the City shall be made only by petition, filed with the Board of Elections, not later than 6:30 P.M. of the 90th day prior to the regular municipal election. Candidates at large shall file a petition signed by qualified electors of the City, not less in number than three (3%) percent of the number voting in the City at the last preceding regular municipal election. Candidates for Ward Councilmen shall file a petition signed by qualified electors in their respective Wards of not less in number than three (3%) percent of the number voting in such Ward at the last preceding regular municipal election. The nomination of each candidate shall be made by a separate petition. No primary election shall be held for the selection of any candidate for any elective office of this City; and no nomination for any such office shall be of any effect unless made as required by this Section 1. The ballot used in the election of officers of the City shall be without party mark or designation. Ballot labels on voting machines, used in the election of officers of this City shall be without party mark or designation. The names of all candidates for any City office shall be placed upon the same ballot and shall be rotated in the manner provided by the laws of the State of Ohio. Except as otherwise provided in this Charter, the laws of Ohio shall govern the nomination and election of the elective officers of this City.

Section 2. Vacancies in Elective Offices

The office of an elected officer of the City shall become vacant upon his death, resignation, or recall pursuant

to Article III, Section 2, and shall also be declared vacant by resolution of the Council if such officer shall remove from the City, or from his Ward in the case of a Ward Councilman, or if it shall be found that he did not reside in the City, or in the case of a Ward Councilman, in his Ward, continuously for a period of three years preceding his election; or if he shall draw regular compensation from any other public body; or if he shall have any financial interest in any contract to which the City is a party.

ARTICLE III

Initiative, Referendum and Recall

Section 1. Initiative, Referendum

Ordinances and other measures may be proposed by initiative petition and adopted by election, and ordinances and other measures adopted by the Council shall be subject to referendum, to the extent and in the manner now or hereafter provided by this Charter or the laws of Ohio.

Section 2. Recall

The electors shall have the power to remove from office by a recall election any elected officer of the City. If an elected officer shall have served for six months of his term, a petition demanding his removal may be filed with the Clerk of the Council, who shall note thereon the name and address of the person filing the petition and the date of such filing. Such petition may be circulated in separate parts, but the separate parts shall be bound together and filed as one instrument. Each part shall contain the name and office of the person whose removal is sought and a statement in not more than two hundred (200) words of the grounds for the removal. Such petition shall be signed by at least that number of electors

which equals 20% of the electors voting at the last regular municipal election. Within ten (10) days after the day on which such petition shall have been filed, the Clerk shall determine whether or not it meets the requirements hereof. If the Clerk shall find the petition insufficient, he shall promptly certify the particulars in which the petition is defective, deliver a copy of his certificate to the person who filed the petition with him, and make a record of such delivery. Such person shall be allowed a period of twenty (20) days after the day on which such delivery was made in which to make the petition sufficient. If the Clerk shall find the petition sufficient, he shall promptly so certify to the Council, and to the officer whose removal is sought, and shall make a record of such certification and the time thereof. If such officer shall not resign within five days after the day on which such delivery shall have been made, the Council shall thereupon order and fix a day for holding a recall election, not less than sixty, nor more than seventy-five days after the date of the clerk's certification of sufficiency. Such recall elections shall be certified to the Board of Elections and held in accordance with the general laws of Ohio. At such recall election, the following question shall be placed on the ballot: "Shall (name of officer) be allowed to continue as (name of office)?" with provision on the ballot for voting affirmatively or negatively on such question. If a majority of the votes cast at such election shall be voted affirmatively, such officer shall remain in office. If a majority of the votes cast shall be voted negatively, such officer shall be considered as removed and his office shall be deemed vacant, and such vacancy shall be filled as provided in this Charter. The officer removed by such recall election shall not be eligible for appointment to the vacancy created thereby.

ARTICLE IV

Mayor

Section 1. Term of Office

The Mayor shall be elected for a term of two (2) years, and assume office on the first day of January following his election, and serve until his successor is elected and qualified. Until such time as the financial affairs of this Municipality shall warrant, the Mayor shall be a part time officer, this to be decided by a two thirds (2/3) vote of all the members elected to Council and his office shall be at the City Hall.

Section 2. Qualification

The Mayor shall have been for at least three (3) years prior to his election and shall continue to be a resident of the Municipality, also that he shall have been a qualified elector of same. He shall not hold any other public office or employment, except as otherwise provided in this Charter or ordinance, and except that of Notary Public, membership in the State Militia or Reserve Corps of the United States.

Section 3. Judicial Powers

The Mayor shall have all the judicial powers granted by the general laws of the State of Ohio, to Mayors of the class of this Municipality.

Section 4. Legislative Powers

The Mayor shall attend all meetings and be entitled to a seat in Council. He shall not have a vote in Council, but shall have the right to introduce ordinances and resolutions and to take part in the discussion of all matters coming before the Council.

Section 5. Veto

All ordinances and resolutions of the Council shall be signed by its presiding officer and attested by the Clerk of Council. They shall be presented to the Mayor, by the Clerk, within forty-eight (48) hours after passage by the Council. If the Mayor approves such ordinance or resolution, he shall sign it forthwith and return it to Council. If he does not approve it, he shall return it within ten (10) days after it is presented to him, with a statement of his objections to the Council, who shall enter his objections on its Journal. The Council may then reconsider the vote on the passage of such legislation not later than at its next regular meeting. If, on reconsideration, it is approved by two thirds (2/3) of all the members elected to Council, it shall become effective. If any ordinance or resolution shall not be returned by the Mayor within ten (10) days after it was presented to him, it shall become effective in the same manner as if he had signed it. The Mayor may disapprove any item or items of an ordinance making an appropriation of money, and item or items so disapproved shall be void unless repassed by the Council in the manner herein prescribed.

Section 6. General Powers of the Mayor

The Mayor shall appoint the various department executives, subject to the approvals provided in this Charter, namely that of the Director of Law, Director of Finance, Director of Public Safety, and Director of Public Service, all within thirty (30) days after assuming office. He shall make such other appointments as provided by this Charter. In the case of resignation, death, or removal of any appointed official, the power of appointing a replacement shall remain with the Mayor providing such appointment is made within thirty (30) days. These

appointments of the Mayor, except as otherwise provided in this Charter, shall become official only when the Council has approved of the appointments by a two thirds (2/3) vote of all the members elected to Council. If the Mayor submits the name of any person or persons for the above named offices or appointments, and the Council fails to act within thirty (30) days on approving or rejecting the name or names for appointment, the name or names of the Mayor's appointments shall become effective as though they had received the approved vote of the Council. If the Council rejects any person or persons named as an appointee of the Mayor within the thirty (30) day period, it shall then become the duty of the Mayor to immediately make another appointment or appointments before or at the next regular Council meeting. The Mayor shall be the chief conservator of the peace within the City, and shall see that all ordinances, resolutions, and laws are faithfully obeyed and enforced. The Council shall receive from the Mayor and the Director of Finance, on or before the fifteenth of December of each year an annual estimate of revenues and expenditures for the succeeding year and he shall advise the Council as to the financial condition and needs of the Municipality including necessary appropriation measures. The Mayor, along with the Director of Finance, shall execute on behalf of the City, all contracts, conveyances, evidences of indebtedness, and other instruments to which the City is a party and shall at the first regular meeting in January report to Council concerning the affairs of the City.

Section 7. Removal

The Council may remove the Mayor for gross misconduct, malfeasance, misfeasance, and nonfeasance in or disqualification for office, or for the conviction, while in office, of a crime involving moral turpitude, or for viola-

tion of his oath of office, provided however, that such removal shall not take place without the concurrence of at least two thirds (2/3) vote of all members elected to Council nor until the Mayor shall have been notified in writing of the charge against him at least ten (10) days in advance of any hearing upon such charge, and he or his counsel has been given an opportunity to be heard, present evidence, or examine any witness or witnesses in support of said charge.

Section 8. Vacancy

If, and during any period, the Mayor shall be absent from the City or for any other cause is unable to perform his duties, or the office of Mayor otherwise becomes vacant, the President of Council shall fill such vacancy, temporary or permanent, as provided in Article V, Section 6, of this Charter.

ARTICLE V

The Council

Section 1. Powers, Number and Terms

All the legislative powers of the City of Eastlake, except as limited by this Charter and the Constitution of Ohio, shall be vested in a Council of seven (7) members of whom three (3) members shall be elected at large and four (4) members of which shall be elected from Wards, one from each Ward.

Members of Council shall serve for a term of four (4) years, beginning on the first day of January next following their election and until their successors are elected and qualified except that the three members at large elected at the regular municipal election in 1955 shall serve for two (2) years and thereafter all Councilmen at large shall be elected for a four (4) year term.

Section 2. Qualifications

No person shall be eligible to be a member of Council unless he shall been continuously a resident and qualified elector of the Municipality for at least three (3) years immediately prior to his election or appointment. No person shall continue to serve as a member of Council unless during his term of office, he shall continue to be a resident and a qualified elector of the Municipality, and, if elected or appointed from a Ward, shall continue to be a resident and qualified elector of his Ward. He shall not hold any other public office or employment within the Municipality, except that of Notary Public. No member of Council shall be interested in the profits or emoluments of any contract, job, work, or service for which monies of the Municipality are, or will be expended.

Section 3. Removal

The Council shall be the judge of the election and qualifications of its own members. It may punish, or remove from the Council any member for gross misconduct, misfeasance, malfeasance, nonfeasance, disqualification for office, or for the conviction while in office of a crime involving moral turpitude, or for a violation of his oath of office, or persistent failure to abide by the rules of the Council or absence without justifiable excuse from three (3) consecutive regular meetings of the Council, provided however, that such punishment or expulsion shall not take place without the concurrence of 2/3 of all the members elected to Council; nor until the accused member shall have been notified in writing of the charge against him, at least ten (10) days in advance of a public hearing upon such charge, at which he or his counsel shall have been given an opportunity to be heard, present evidence and examine any witness appearing in support of, or against such charge.

Section 4. Vacancies

Whenever the office of a Councilman shall become vacant, the vacancy shall be filled by a majority vote of all the remaining members of the Council. If the vacancy shall not be filled within thirty (30) days thereof the Mayor shall fill it by appointment. Each Councilman so elected or appointed to fill a vacancy, shall hold office for the balance of the unexpired term and until his successor is elected and qualified.

Section 5. Meetings and Organization

At one o'clock P.M. on the first day of January next following each regular municipal election, Council shall meet at the Council Chambers of the Municipality for the purpose of organization. Thereafter, Council shall meet in regular session at such times as may be prescribed by its rules, regulations, ordinances or by-laws; but it shall hold regular meetings, at least, twice during each calendar month of the year, with the exception of the months of July and August, when during each of said months the Council may, at its discretion, dispense with one of its regular meetings. All meetings of the Council, whether regular or special, shall be open to the public.

Section 6. President of Council

The Council shall at the time of its organization and every two (2) years thereafter choose one of its members as President of Council, who shall preside at all regular and special meetings of Council. When the Mayor is absent or inaccessible, or, for any reason, unable to perform his duties as Mayor, the President of Council shall become the acting Mayor, and while so acting shall have and exercise all the powers of the Mayor, but he shall not cease to be a Councilman, nor in any case shall he lose his right

to vote as a member of Council. In case of the death, resignation or removal of the Mayor, the President of Council shall forthwith become Mayor and his office as Councilman shall become vacant. If the office of President of Council becomes vacant, any vacancies in Council shall first be filled in the manner provided in Section 4, Article V, of this Charter, and thereupon a new President of Council shall be chosen by Council.

Section 7. Clerk of Council

The Council shall choose a Clerk of Council and such other assistants as it shall determine from time to time; but the Council may designate the Director of Finance as the Clerk of the Council. The Clerk of Council shall keep the Journal of the proceedings of the Council and its records, and perform such other duties as Council may from time to time require.

Section 8. Special Meetings

Special meetings of Council may be called by a vote of Council taken at any regular or special meetings; or special meetings may be called by the Mayor and shall be called by the Clerk of Council upon the written request of three members of Council. Any such vote or request, for the calling of a special meeting, shall state the subject or subjects to be considered at the meeting and no other subject or subjects shall be there considered, except on the approval of five (5) or more of the members of Council in attendance at the special meeting. Twelve (12) hours notice in writing of such special meeting, shall be given to each member of Council and the Mayor by personal service, or by leaving same at their usual places of residence; except that the members of Council shall be held to have waived such notice by their attendance at the special meeting.

Section 9. Quorum

Two-thirds of all the members elected to Council shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by the rules of Council.

Section 10. Procedure of Council

The Council shall determine its own rules and order of business consistent with this Charter. Council shall keep a journal of its proceedings, which shall be a public record. All legislative action, shall be by ordinance or resolution, except when otherwise required by the Constitution or the laws of the State of Ohio, but departmental procedure and administrative matters may be transacted by motion recorded on the Journal. On the passage of every ordinance or resolution, the vote shall be taken by yeas and nays which shall be entered on the Journal. No ordinance or resolution shall be passed without the concurrence of a majority of all the members elected to Council. Every ordinance and resolution shall be fully and distinctly read on three different days, unless 3/4 of all the members elected to Council vote to suspend this rule, taken by yeas and nays and entered on the Journal. An ordinance after having been fully read on its first reading may be read by title only on the second and third readings thereof, unless otherwise requested by any member of Council. No ordinance or resolution shall contain more than one subject, and such subject shall be clearly expressed in its title. Council may provide for the revision, rearrangement and codification of the ordinances of the Municipality or any portion thereof, at such time as Council may determine. All ordinances, resolutions, statements, orders, proclamations, notices and reports, required by law, or by this Charter, or by ordinances of Council to be published, may either be posted in five (5) of the most public places in the Municipality, as determined by Council for a period of not less than fifteen (15) days, or be published in a newspaper of general circulation in the Municipality, once a week for two consecutive weeks, as the Council may determine. All ordinances or resolutions upon their final passage shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and Clerk of the Council, but failure to sign an ordinance or resolution for the purpose of authentication shall neither invalidate the ordinance nor impair its effectiveness. All ordinances and resolutions of a general or permanent nature, or involving the expenditure of money in which no emergency is declared shall take effect thirty (30) days after their passage by Council. Emergency ordinances, shall take effect, as provided by Section 11 of this Article V.

Section 11. Emergency Ordinances

An emergency measure is an ordinance or a resolution necessary for the immediate preservation of the public peace, health or safety, or providing for the usual daily operation of a municipal department, and shall take effect, unless a later time be specified therein, upon passage by Council and the signature of the Mayor, or upon the expiration of the time within which it may be disapproved by the Mayor, or upon its passage after disapproval by the Mayor, as the case may be. Ordinances providing for the appropriation of money, or for an annual tax levy, or for improvements petitioned for by the owners of a majority of the front footage of the property benefited and to be specially assessed therefor, may be passed as and

take effect at the same time as emergency measures. No action of the Council in authorizing any change in the boundaries of the Municipality, or the surrender or joint exercise of any of its powers, or in granting any franchise, or in contracting for the supply to the Municipality or its inhabitants, of the product or service of any utility, whether municipally owned or not, shall ever be passed as an emergency measure. Emergency ordinances and resolutions, shall only be passed by a 2/3 vote of all the members elected to the Council and the reasons for declaring such ordinance or resolution an emergency measure shall be set forth, in the preamble or in one section of the ordinance or resolution.

Section 12. Salaries and Bonds

The Council shall have the power to fix the salary of its own members and of each officer, employee and member of any department, board, or commission of the Municipality whether elected or appointed, except as otherwise provided in this Charter. Any such person may be required by the Council, from time to time to furnish bond in such sum as the Council shall determine and with such surety as shall be approved by the Mayor; and the Council may provide that the premium for any such bond shall be paid the Municipality. The compensation of the Mayor, each member of the Council, and any other elected official shall be fixed at least thirty (30) days before the time for the filing of the nominating petitions for the terms beginning on the next succeeding first day of January, and shall not thereafter be diminished or increased during such terms.

ARTICLE V

Administrative Offices and Departments

Section 1. General Provisions

The following departments are hereby established by this Charter:

Department of Law
Department of Finance
Department of Public Safety
Department of Public Service

and the Council shall provide by ordinance for the organization thereof. The Council may by ordinance establish additional offices, positions, departments, boards or divisions thereof, and provide for them as it may deem necessary. With the exception of the Department of Finance and the Department of Law, the Council may combine or abolish existing departments and divisions as it may deem necessary, and may authorize one person to be the head of two or more departments or divisions. The Mayor may act as the head of the Department of Public Safety and the Department of Public Service.

Section 2. Department of Law

The Director of Law shall be the head of the Department of Law, and shall be appointed by the Mayor, subject to confirmation of 2/3 of all the members elected to the Council. He may be removed from office by the Mayor, but such removal shall not take place without the concurrence of 2/3 of all the members elected to Council. He shall serve the Mayor, the Council, the administrative departments, and the officers, boards and commissions of the City as legal counsel in connection with municipal affairs, and subject to the direction of the Mayor

and/or Council, shall represent the City in all proceedings in court or before any administrative board. He shall perform all other duties now or hereafter imposed upon City Solicitors under the laws of Ohio, unless otherwise provided by ordinance of the Council, and he shall perform such other duties consistent with his office as the Mayor or the Council may request. No person shall act as Director of Law unless duly admitted to practice law in the State of Ohio.

Section 3. Department of Finance

The Director of Finance shall be the head of the Department of Finance, and the fiscal officer of the City. He shall be appointed by the Mayor, subject to confirmation of 2/3 of all the members elected to the Council. He may be removed from office by the Mayor, but such removal shall not take place without the concurrence of 2/3 of all the members elected to the Council. He shall keep the financial records of the Municipality and of all monies received and expended, of all property owned by the Municipality, and all taxes and assessments levied and received. He shall keep and preserve such money in the place or places authorized by ordinance, and shall disburse the same as may be required by law or ordinance.

He shall not allow the amount set aside for any appropriation to be overdrawn or drawn for any other purpose.

He shall examine and audit the accounts of all other officers, employees and departments prior to the close of the fiscal year, or whenever required by Council.

He shall require evidence that the amount of any claim presented to him is due.

He shall be responsible for the preparation and submission to Council of appropriation measures, and shall assist the Mayor and Council in the preparation of estimates, budgets and other financial matters, and at all times, keep the Mayor and Council fully advised as to the financial condition and needs of the Municipality, and shall perform all other duties required by the Charter, the Mayor, or by ordinance of the Council, consistent with his office.

Section 4. Department of Public Safety

The Director of Public Safety shall be the head of the Department of Public Safety and shall be appointed by the Mayor, subject to the confirmation of 2/3 of all the members elected to Council. He may be removed from office by the Mayor, but such removal shall not take place without the concurrence of 2/3 of all the members elected to the Council, provided, however, that if the Mayor acts as Safety Director, the Council may, by a vote of 2/3 of all the members elected to the Council remove him as such Safety Director, and thereupon another Safety Director shall be appointed.

The Director of Public Safety shall be the head of the Division of Police, Division of Fire, Division of Building Engineering and Inspection, and Division of Health. He shall make all necessary rules and regulations for the governing of the Department of Public Safety and the several divisions thereof, and he shall be charged with the duty of enforcing all police, health, safety and sanitary regulations that may be prescribed by ordinances or rules of the Municipality, or the general laws of the State of Ohio. The Director of Public Safety shall perform such other duties, consistent with his office, as may be required by this Charter, by ordinance of the Council, or as directed by the Mayor.

Section 5. Department of Public Service

The Director of Public Service shall be the head of the Department of Public Service and shall be appointed by the Mayor, subject to confirmation of 2/3 vote of all the members elected to the Council. He may be removed from office by the Mayor, but such removal shall not take place without the concurrence of 2/3 of all the members elected to the Council, provided however, that if the Mayor acts as Service Director, the Council may, with the concurrence of 2/3 of all the members elected to the Council, remove him as such Service Director, and thereupon another Service Director shall be appointed. The Director of Public Service shall have charge of all public works and improvements and the construction thereof, and all engineering and inspection in connection therewith. He shall be charged with the construction, improvement, repair and maintenance of streets, sidewalks, alleys, lanes, bridges, wharves, docks and breakwalls; of water mains, pumps, systems, pipes, purification and filtration plants, and the water distribution system; of sewers, sewage systems, drains, ditches, culverts, streams, water courses and harbors; and of all public buildings, parks, playgrounds, cemetries, and other public grounds. He shall manage and control cemeteries, market houses, sewage treatment plants, water works, and all public utilities owned by the Municipality and shall enforce all the obligations of privately owned or operated public utilities enforceable by the Municipality. He shall have charge of the preservation and care of all surveys, maps, plans, drawings and estimates for public work; the cleaning, resurfacing, repairing, sprinkling and lighting of streets and public places; the collection and disposal of waste; and the preservation of all property belonging to the Municipality and pertaining to the functions thereof. He shall perform such other

duties, consistent with his office, as may be required by this Charter, by ordinance of the Council, or as directed by the Mayor.

ARTICLE VII

Civil Service

Section 1. General Provisions

On and after the effective date of this Charter, the Civil Service of the City shall be divided into the unclassified and classified service as defined by the laws of Ohio and appointments to and promotions in the Civil Service of the City of Eastlake, Ohio shall be made only according to merit and fitness to be ascertained as far as practical by competitive examinations; and thereafter no person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted or reduced as an officer or employee in the Civil Service of the City except as provided by the general laws of the State of Ohio.

Section 2. Members, Qualifications, Terms

The Mayor shall appoint three persons, who shall be electors of the City of Eastlake and who shall constitute the Civil Service Commission of the City of Eastlake, provided, however, that members, of the existing Civil Service Commission of the City of Eastlake, shall continue in office for the terms for which they have been appointed and until their successors are appointed and qualified. The term of office of the members of the Commission shall not exceed six years and any vacancy occuring other than expiration of term shall be filled for the unexpired portion of the term only and in the manner designated above for the original appointments.

Section 3. Powers

Said Civil Service Commission of the City of Eastlake shall be vested with all the powers and authority now, or hereinafter, granted to the municipal Civil Service Commissions by the general laws of Ohio and shall be subject to all the rules, regulations and limitations now, or hereinafter provided by the general laws of Ohio.

ARTICLE VIII

City Planning Commission

Section 1. Powers and Duties

The Planning Commission shall have the power conferred upon it by the general laws of the State of Ohio to frame or adopt a plan or plans for dividing the Municipality or any portion thereof into zones or districts representing the recommendations of the Commission in the interests of public health, safety, convenience, comfort, prosperity or general welfare for the limitation and regulation of height, the bulk and location, (including the percentage of lot occupancy, set-back building lines, side lines and area and dimensions of yards, courts and other open spaces,) and the uses of buildings and other structures and/or premises in such zones and districts.

It shall adopt and recommend to the Council a comprehensive plan for the physical development of the Municipality, or the re-development of any area or district therein, which shall include the location of public ways, property, bridges, schools, utilities, buildings, parks, playgrounds, and recreation areas.

Further, the Commission shall be required to make and keep maps or plans of the whole or any portion of the Municipality. It shall be required more specifically that

such maps and plans shall show the Commission's recommendations for general location, character and extent of streets, alleys, ways, viaducts, bridges, waterways, waterfronts, subways, boulevards, parkways, parks, playgrounds, aviation fields and other public grounds, way or open spaces; the general location and the extent of public utilities and terminals whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of such public ways, grounds, open spaces, buildings, property, utilities or terminals.

The Commission shall further have the powers and duties concerning control, preservation and care of historical monuments, design and location of harbors, bridges, statuary, viaducts and street fixtures and other public structures.

The Commission shall have the power to employ clerks, engineers, draftsmen and such other subordinates as it shall deem necessary for the performance of its functions; the expense for which must be within the amounts appropriated by Council to cover the services of the Commission.

Section 2. Members, Qualifications, Terms

The Planning Commission shall consist of the Mayor, the Service Director and three citizen members, holding no other municipal office. The Commission citizen members shall be appointed by the Mayor, subject to the confirmation of 2/3 vote of all the members elected to Council, and shall serve for a term of five (5) years, however, upon passage of the Charter, the then existing members

of the Planning Commission shall remain in office for the terms for which they were appointed. Any vacancy occuring in the Commission shall be filled for the unexpired portion of the term only and in the manner prescribed by this Charter for the original appointment. Any appointed citizen member of the Commission may be removed by the Mayor for cause, subject to the approval of 2/3 of all the members elected to Council, and upon complaint and a public hearing.

The Commission shall make its own rules and shall appoint a chairman and secretary. It shall keep a journal of its proceedings and its meetings shall be open to the public at all times.

Section 3. Mandatory Referral

Any amendment to, or change in, the existing zoning laws of the City, originating with the Council, shall be submitted to the Planning Commission, which shall be allowed a reasonable time, not less than thirty days, for consideration and report to Council. After such consideration and report, Council shall hold a public hearing on such proposed amendment or change, giving not less than thirty days notice of the time and place thereof, in two newspapers of general circulation within the City; and during such thirty days the text or copy of such ordinance or measure, proposing such amendment or change, and all papers pertaining thereto and the report of the Planning Commission shall be on file with the Clerk of the Council for public examination. Copies of the proposed amendment or change shall also be displayed in five of the most public places within the City. If the Planning Commission shall disapprove of the proposed amendment or change, the procedure shall be the same

as enumerated above except that the Planning Commission or its representatives may also, during the aforesaid 30 day period of public notice, cause to be advertised in two newspapers of general circulation and posted in five of the most public places, a statement of not more than 300 words presenting the reasons for the refusal, at the City's expense.

Section 4. Zoning Board of Appeals

There shall be a Zoning Board of Appeals consisting of five (5) citizen members, holding no other public office, appointed by the Mayor, subject to the confirmation of 2/3 of all the members elected to the Council, for terms of five years each. However, upon passage of this Charter, the then existing members of the Board of Appeals shall remain in office for the terms for which they were appointed. Any vacancy occuring other than by expiration of term, shall be filled for the unexpired portion of the term only and in the manner prescribed in this Charter, for the original appointment. The Board shall administer the details of the application of the zoning regulations, and shall hear and determine appeals from refusal of building permits by the Building Commissioner or other officer, may permit exceptions to and variations from the district regulation and shall have any and all other powers conferred upon it by ordinance or the general laws of the State of Ohio. The Board of Appeals may make its own rules and select its own chairman and secretary. It shall keep a journal of its proceedings and all of its meetings shall be open to the public.

The Zoning Board of Appeals citizen members shall be removed by the Mayor for cause, subject to the approval of 2/3 of all the members elected to Council, and upon complaint and a public hearing.

ARTICLE IX

Recreation Commission

Section 1. General Provisions

The Council may provide, designate and set apart for public use as playgrounds, playfields, gymnasiums, swimming pools or indoor recreation centers, any lands or buildings, owned by the City, not dedicated or devoted to other municipal use and may acquire land or buildings or both, for such purpose in the manner provided by law.

Section 2. Members, Terms and Duties

The Council may establish and provide for a City Recreation Commission with the authority and power to prepare, equip, operate and maintain such recreation facilities and employ supervisors, play leaders, recreation directors and such other employees as such Commission may deem necessary. Such Commission shall consist of five members and shall possess all powers and be subject to all the responsibilities prescribed by ordinance or general laws. The members of the Commission shall be appointed by the Mayor subject to the confirmation of 2/3 of all the members elected to the Council and shall serve for terms of five (5) years, or until their successors are appointed and qualified; provided, however, that the members of any Recreation Board of Commission at the time of the effective date of the Charter shall continue in office for the terms for which the members were appointed; and provided further that one member of the Commission may be a member of the school district in which the City is located. Members of such Commission shall serve without pay and vacancies on the Commission other than by expiration of term, shall be filled in the same manner as the original appointment and for the unexpired portion of the terms only.

Members of the Commission shall be removed by the Mayor for cause, subject to the approval of 2/3 of all the members elected to Council, and upon complaint and a public hearing.

Section 3. Conduct of Meetings

The members of the City Recreation Commission, so established, shall elect their own chairman and secretary and select such other officers as they may deem necessary. The Commission shall have the power to adopt rules and regulations for the conduct of all business within its jurisdiction.

ARTICLE X

Fiscal Matters

Section 1. Finances

The Director of Finance and the Mayor shall furnish a fiscal report of revenues, expenditures, and appropriation balances to each member of Council, in writing, not later than the 15th day of December of each year.

The Director of Finance and the Mayor shall also furnish to Council, not later than the second regular meeting of the month of January of each calendar year, an ordinance making appropriation for the expenditures of the Municipality during the year. Such ordinance shall be adopted by Council in its original form or with such revisions as it may find proper. Such appropriation ordinance shall be in such form and detail as may be required by the general laws of the State of Ohio, and may be amended or supplemented by Council after its passage, but appropriations shall not be made in excess of the estimated revenues of the Municipality. The

Council may make preliminary appropriations for current expenses sufficient in amount to meet the current needs until the annual appropriation ordinance has been enacted and is in effect.

The passage of an ordinance authorizing the issue or sales of bonds or notes of the Municipality shall constitute an appropriation of the proceeds thereof, to this purpose for which said bonds or notes are issued.

Section 2. Transfers and Balances

The Council may transfer, during the current year, any part of an unincumbered balance of an appropriation to any other purpose or object for which the appropriation therefor, has proven insufficient, or may authorize a transfer of money to be made between items appropriated to the same office or department, except as follows:

(a) No transfer shall be made from any bond or note fund, except that the unincumbered or unexpended balance of such fund no longer needed for the purpose for which such fund was created, shall be transferred to the fund from which said bonds or notes are to be paid.

(b) No transfer shall be made of money raised or appropriated for the payment of any bond or note of the Municipality unless all indebtedness, interest and obligations, which can lawfully be paid from such money, have been paid.

At the close of each fiscal year, the unincumbered balance of each appropriation other than the appropriations of bond and note funds, shall revert to the fund from which it was appropriated and shall be subject to future appropriation, except otherwise provided in the next paragraph of this section.

A fund to be known as the Improvement Fund may be maintained in the Treasury into which municipal monies may be appropriated or allocated from time to time by action of Council, and which shall then become and remain separated and distinct from general funds. Improvement Fund monies may be advanced or expended from time to time by action of Council for public improvements not otherwise provided for.

Section 3. Payment of Claims

No money shall be drawn from the Treasury, nor shall any obligation for the expenditure of money be incurred, except pursuant to appropriations made by Council.

The Director of Finance and/or the Mayor shall have the power to require evidence that the amount of each claim is justly due and is in conformity to law and municipal legislation relating thereto. For that purpose they may summon before them any officer, agent of any department, or employee of any department of the Municipality, and examine him under oath or affirmation relative thereto.

Section 4. Custody and Deposit of Funds

The Council shall by ordinance provide for the custody of all funds of the Municipality and for the deposit of funds as provided by the Uniform Depository Act of the State of Ohio. All funds received on behalf of the Municipality by any officer, employee or agent thereof, shall be promptly paid over to the Director of Finance of the Municipality, and by him promptly placed in the depository bank. Council, however, may authorize such sums as it deems proper to be kept in cash for the daily operations of any department or office.

Inactive funds in the Treasury of the municipal depository may be invested from time to time in such manner as is now or hereafter may be authorized by the general laws of the State of Ohio for the investment of inactive funds of municipalities.

Section 5. Certification of Expenditures

No contract, agreement, or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution, or order for the expenditure of money be passed, or issued, by Council, or be authorized by any officer of the Municipality unless the Director of Finance shall have certified in writing that the money required for such contract, agreement, obligation or expenditure is in the Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose. The provisions of this section shall not be construed to prevent the making of contracts for a period extending beyond a single fiscal year, when such contracts are otherwise authorized by the Constitution of the State of Ohio, by this Charter, or by general laws of the State of Ohio. All monies actually in the Treasury to the credit of the fund from which they are to be drawn and all monies applicable to the payment of the obligation or appropriation involved that are anticipated to come into the Treasury before the maturity of such contract, agreement, or obligation from taxes, assessments, license fees or from the sales of service, products, or by-products of any Municipal undertaking, and monies derived from lawfully authorized bonds or notes shall for the purpose of certification be deemed to be in the Treasury to the credit of the appropriate fund, and shall be subject to such certification.

Section 6. Public Bidding

No expenditure, other than the compensation of persons employed by the City, in excess of one thousand dollars ($1000.00) shall be made except pursuant to a contract made with the person, firm or corporation whom Council determines to be the lowest and best, responsible bidder, after public advertising and receipt of bids in the manner provided by the laws of the State of Ohio.

Section 7. Franchises

The Council, by ordinance, may grant permission to any person, firm or corporation to construct and operate a public utility in, on, across, under or above any public street or ground within the Municipality. It may prescribe in the ordinance the kind and quality of service or product to be furnished, the rate or rates to be charged therefor, and any other terms conducive to the public interest. Such grant may by action of Council be amended or renewed in the manner and subject to the provisions established by this Charter for original grants. Such grant, amendment, or renewal, shall be for such period of time as Council may determine, and shall not be perpetual or exclusive.

No consent of the owner of property abutting on any public street or ground shall be necessary to the effectiveness of any grant, amendment, or renewal, unless the construction or operation of the public utility authorized thereby is of such character as to constitute an additional burden upon such public street or ground. All such grants, amendments or renewals shall be made subject to the continuing right of Council to provide reasonable regulations for the operation of such utilities with reference to such streets and public grounds, including the right to require such reconstruction, relocation or discontinuance of appliances,

plant or equipment used in such streets or public grounds as shall, in the opinion of Council, be necessary in the public interest.

Section 8. Taxation and Finances

The laws of Ohio relating generally to taxes, budgets, appropriations, deposits, expenditures, debts, bonds, contracts and other fiscal matters of the Municipality shall be applicable to this City except as modified by, or necessarily inconsistent with, the provisions of this Charter.

ARTICLE XI

Miscellaneous

Section 1. Military Service

Except as hereafter in this section provided, if a person holding an elective office in the Municipality shall be called into active military service during his elective term, his office shall thereupon become vacant, and it shall be filled as provided by this Charter. Membership in Military Reserve or State Militia shall not create a vacancy in office unless the office holder be called to full time military service for a period exceeding thirty (30) consecutive days.

Section 2. Effect of Charter

All general laws of the State of Ohio as now or hereafter enacted which are not in conflict with this Charter, as now enacted or hereafter amended, or with any ordinance enacted hereunder shall apply to the government of the Municipality; and all ordinances, resolutions and by-laws in force in the Municipality at the time when this Charter takes effect which are not inconsistent with the provisions of this Charter shall continue in full force and effect until amended or repealed.

The taking effect of this Charter shall not affect any pre-existing rights of the Municipality, nor any right or liability or pending suit or provision either on behalf of or against the Municipality, nor any contract entered into by the Municipality, nor any franchise granted by the Municipality, nor pending proceedings for the authorization of public improvements or the levy of assessments therefor.

Section 3. Words Held to be Inclusive

Masculine pronouns used in this Charter shall be construed to include the feminine pronoun, and the singular number shall be construed to include the plural number whenever the context shall require.

Section 4. Partial Invalidity

The determination that any section or part thereof of this Charter is invalid, shall not invalidate nor impair the force or effect of any other section or part thereof, except to the extent that such other section or part thereof is dependent for its operation upon the part declared invalid; and in the event any section or sections or parts thereof shall be held invalid, then the laws of the State of Ohio pertaining to municipalities and dealing with the same subject matter shall apply.

Section 5. Amendment to Charter

The Council may by a vote of at least 2/3 vote of all its members, submit to the electors of the Municipality amendments to this Charter; and, upon petition being presented to Council setting forth a proposed amendment, signed by not less than that number of resident and qualified electors of the Municipality which equal ten (10) percent of the number of qualified electors of the Municipality.

Such proposed amendment shall be submitted to the electors of the Municipality for adoption or rejection. The submission of a proposed amendment to the electors shall be governed by the provisions of the Constitution of the State of Ohio, and to such extent as the Constitution shall fail to provide therefor, the Council shall determine the manner of such submission. If any amendment so submitted is approved by a majority of the electors voting thereon, its provisions shall be incorporated into this Charter; except that if two or more inconsistent amendments on the same subject matter are submitted at the same election, only the one receiving the largest affirmative vote, not less than a majority, of the votes cast on the subject matter, shall become incorporated into this Charter.

Section 6. Effective Date

For the purpose of electing officers and holding and conducting municipal elections, this Charter shall take effect at the next regular municipal election to be held the first Tuesday in November in the year 1955; except that those candidates filing for such public offices provided for in this Charter shall submit their petition of candidacy to the Board of Elections of Lake County, Ohio, ninety (90) days before the aforementioned date in compliance with Article II, Section 1, of this Charter. For all other purposes other than the election of municipal officers, this Charter shall take effect on the first day of January in the year 1954 upon its approval by the electors of the Municipality.

We, the undersigned, being a majority of the members of the Charter Commission of the City of Eastlake, have framed this Charter to be voted upon at the regular mu-

nicipal election to be held on the third day of November, 1953.

John M. Barrett, Chairman	Joseph Pizzie
Earl Davis, Vice Chairman	Harry Roberts
Elsie DeJean	Thomas Shipley
Laurence Moss	Patrick Stillisano
Roland Baskin, Legal Counsellor	Helen Page, Secretary

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AMENDMENT TO THE CHARTER OF THE CITY OF EASTLAKE

(Adopted November 2, 1971)

ARTICLE VIII

City Planning Commission

Section 3. Mandatory Referral

That any change to the existing land uses or any change whatsoever to any ordinance, or the enactment of any ordinance referring to other regulations controlling the development of land and the selling or leasing or rental of parkways, playgrounds, or other city lands or real property, or for the widening, narrowing, re-locating, vacating, or changing the use of any public street, avenue, boulevard, or alley cannot be approved unless and until it shall have been submitted to the Planning Commission, for approval or disapproval. That in the event the city council

should approve any of the preceding changes, or enactments, whether or approved or disapproved by the Planning Commission it shall not be approved or passed by the declaration of an emergency, and it shall not be effective, but it shall be mandatory that the same be approved by a 55% favorable vote of all votes cast of the qualified electors of the City of Eastlake at the next regular municipal election, if one shall occur not less than sixty (60) or more than one hundred and twenty (120) days after its passage, otherwise at a special election falling on the generally established day of the primary election. Said issue shall be submitted to the electors of the City only after approval of a change of an existing land use by the Council for an applicant, and the applicant agrees to assume all costs of the election and post bond with the city Auditor in an amount estimated by the County Auditor or the Board of Elections proportionate with any other issues that may be on the ballot at the same time. The applicant shall further agree to authorize the City Auditor to advertise, and assume the obligations to pay, for a notice of the posted bond and the requested land use change in a newspaper of general circulations, whose circulation is either the largest, or second to the largest within the limits of the City for two consecutive times, with at least two weeks between notices and a third notice one week prior to the election. Should the land use request not be affirmed by a 55% favorable vote it cannot be presented again for one full year and a new request must be made at that time.

It shall be the duty of any applicant for a land use change to obtain zoning codes, maps, thoroughfare and sewer plans or advice of the city council and officials and approving bodies for interpretation of this section as they are always available. If this section is violated and a building is under construction or completely constructed it shall

be mandatory for the Mayor, Safety Director, Service Director and Building Inspector equally to have the building or structure removed completely within 60 days at the owners expense as these officials are charged with the enforcement of this section. It shall be mandatory that the City Council charge and fund the Planning Commission to have on display at all times in the council chambers and available to the public a zone map, showing a legend and summary of zoning regulations by district, Major use, Minimum and maximum lot width and that each district, city park, playground, and city lands be accurately located and identified with the date of adoption and the date of revisions to date. Any and all revisions will be posted to the zone map within 90 days of their occurrence. Maps shall be available to each land owner of the city for a nominal cost not to exceed $2.50 each on demand. Maps shall be available within six months of this charter change.